

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ALLEN HAMILTON and LOIS  
HAMILTON, husband and wife,

Plaintiffs,

vs.

SILVEN, SCHMEITS & VAUGHAN,  
PC, an Oregon Professional  
Corporation, and ALAN J.  
SCHMEITS,

Defendants.

W-3

SU

ORIGINAL

RECEIVED  
JUL 23 2010  
YTURRI ROSE LLP

DEPOSITION OF ALLEN HAMILTON

Taken in behalf of the Defendants

Baker City, Oregon

July 21, 2010

Jeannine K. Manny  
Certified Shorthand Reporter  
PO Box 936  
Pendleton, Oregon 97801  
(541) 276-0630

EXHIBIT

24

PAGE

1

OF

3

ALLEN HAMILTON - by Mr. Burnham

35

1 to that extent. I don't recall ever smelling chemicals like  
2 that.

3 Q And after you smelled the chemical, what did you do?

4 A Well, we noticed some plants along the fence were  
5 dying and stuff, and my wife and I decided, well, we could go  
6 ahead and replant some of the garden. So I was working on the  
7 weekend, I re-tilled a bunch of the flat, up where it had died,  
8 and replanted a bunch of the garden again.

9 Q And did the replanting take effect?

10 A Not really very good, and the stuff died, and then  
11 immediately he re-sprayed again, and then stuff started dying  
12 along the fence.

13 Q You say he re-sprayed. You said you never saw him  
14 spray. How do you know he re-sprayed?

15 A Well, Mr. Elms said in a court document that he had  
16 always sprayed that five-foot strip, and -- but it was obvious  
17 that he had sprayed. He has -- I guess the best way to put it  
18 is he has a big warehouse with an eight-foot security fence  
19 around it, you know, and so nobody else could get in there to  
20 spray and nobody else had a reason to spray. Especially our  
21 garden. It was right across from his chain link fence. He was  
22 obviously bordering the chain link fence, is where the spray  
23 came from, where our garden was dying.

24 Q Why do you think he sprayed again?

25 A Well, one day my wife was outside and Mr. Elms was

EXHIBIT

PAGE

2

OF

3

ALLEN HAMILTON - by Mr. Burnham

118

1 A Yes.

2 Q And that was during what period of time?

3 A Well, we had given them vegetables just, you know, off  
4 and on through the years as we had a garden there.

5 Q And how many years did you have a garden there?

6 A Well, we planted a garden in 2002 and 2003. I think  
7 one year, it seemed like the year my wife was sick, we didn't  
8 have a garden. Other than that, every year we was there.

9 Q But the first time you had any problem with the garden  
10 was in 2006?

11 A Well, what I did notice is that for some reason all  
12 the -- some of the vegetables along the fence seemed to die,  
13 and our potatoes all died one year, and we dug them up and ate  
14 them. And I thought at the time they must have got sunburned,  
15 but evidently -- I feel now that Mr. Elms had sprayed them,  
16 because, like, I started breaking out with terrible rashes on  
17 both legs when we started eating stuff out of the garden.

18 Q And when was that?

19 A Well, let's see. It was -- I broke out with the rash  
20 on my legs -- we was probably there a year or so, and then I  
21 started getting these rashes on my legs, and that was -- we ate  
22 the garden vegetables all along.

23 Q What was the first year you noticed you had a problem?

24 A Oh, probably in 2003, I think. Like I said, stuff  
25 along the fence died and we ate the vegetables. I started

EXHIBIT

PAGE

24  
3 OF 3